

**COMPLAINT INVESTIGATION  
CLARK COUNTY SCHOOL DISTRICT  
(#CL111008)**

**INTRODUCTION**

On 11/10/08, the Nevada Superintendent of Public Instruction received a complaint dated 11/7/08 from the Legal Aid Center of Southern Nevada (Center) on behalf of a parent of a student alleging violations in the special education program of a student with disabilities attending Clark County School District (CCSD). An investigation team was appointed to examine the allegations that the CCSD: 1) failed to provide behavior strategies and create Behavior Intervention Plans (BIPs) for the student at the current placement and very minimally in other placements; 2) provided minimal behavior intervention support at the current school; 3) failed to provide an adequate individualized educational program (IEP) at the current school, and failed to provide adequate IEPs in previous CCSD placements; 4) failed to provide an adequate system of communication to follow the student in school and for use outside the school environment; 5) failed to offer or provide behavior intervention services for the home and family at any time; 6) failed to provide a structured self-contained classroom overseen by a teacher with experience in autism education; 7) made an offer of an alternative instructional arrangement (AIA) placement without benefit of a manifestation determination review; 8) placed the student in a special school that was not reasonably calculated to ensure that the student received educational benefit; and 9) made the determination to place the student in the special school prior to the IEP meeting.

Concurrently with filing the complaint, the Center also filed a request for a due process hearing dated 11/7/08 on behalf of the parent. The request for a due process hearing included identical allegations to that of the state complaint. Federal regulations at 34 CFR §300.152(c)(i) state "If a written complaint is received that is also the subject of a due process hearing under §300.507 or §300.530 through 300.532, or contains multiple issues of which one or more are part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing." Therefore, the complaint investigation was set aside pending the resolution of the due process hearing. CCSD and the parent reached a resolution dated 2/25/09. The Nevada Department of Education (NDE) received official notice of the withdrawal of the request for the due process hearing on 3/6/09. The parent's request for a complaint investigation on the concomitant issues was not withdrawn and the sixty-day timeline for resolving the complaint commenced on 3/6/09.

Allegations #1, #3, and #5 included events that occurred more than a year prior to the filing of the complaint. Federal regulations at 34 CFR §300.153(c) and state regulations at Nevada Administrative Code (NAC) §388.318(1) require that complainants allege violations that occurred not more than one year to the date that the complaint is received. Any events that occurred prior to 11/10/07 were not under the jurisdiction of the NDE to investigate and were not considered by this investigation team.

**COMPLAINT ISSUES**

The allegations articulated in the complaint, and further clarified by a review of documents and interviews, raised the following issues under the jurisdiction of the NDE:

- Issue 1: Whether CCSD complied with federal and state requirements to provide an appropriately licensed and prepared teacher for the 2008/2009 school year for the student.
- Issue 2: Whether CCSD implemented the BIPs in effect for the student during the 2008/2009 school year.
- Issue 3: Whether CCSD complied with state requirements with regard to providing an opportunity for parent participation in making the placement decision proposed in the 10/28/08 IEP and providing prior written notice of its placement decision.

Issue 4: Whether the CCSD's 10/28/08 IEP determinations were reasonably supported in light of the student's abilities and needs with regard to:

- a. Placement
- b. BIP, including any provisions to address home/family needs
- c. Assistive technology
- d. Speech/language as a related service

### **PERSONS INTERVIEWED**

The investigation team interviewed the following persons:

- Parent
- Compliance monitor
- Principal
- Special education teacher
- Special education director southwest region (special education director)
- Special education facilitator
- Behavior mentor from southwest region (behavior mentor)

### **DOCUMENTS REVIEWED**

The documents reviewed by the investigation team included the following:

- 11/2/07 IEP
- 11/2/07 BIP
- 10/7/08 BIP
- 10/28/08 IEP
- 10/28/08 IEP Team Telephone Meeting Follow-up Letter
- 10/28/08 Prior Written Notice (PWN)
- 9/23/08 Technical Assistance Request Form (Technical Request Form)
- Frequency Data Sheets for 2008/2009 school year
- Teacher notes of behavior for 2008/2009 school year
- Chronology of Behavior Summary for 2008/2009 school year
- Status Record – 4/6/07-11/22/08
- 2008/2009 School Calendar
- Attendance Records for 2008/2009 school year
- Legal Aid Center Summary Letter dated 3/25/09 providing additional input
- Resolution Agreement dated 2/25/09

The investigation team also reviewed the following material:

- Nevada Administrative Code (NAC), Chapter 388
- Individuals with Disabilities Education Act (IDEA) Regulations, 34 CFR Part 300
- U. S. Department of Education, Office of Special Education Programs (OSEP) Memorandum (2000)
- NDE Teacher Licensure Requirements for Endorsement for Teaching Autism (Website)

### **FINDINGS OF FACT**

This investigation involved a middle school student eligible for special education with multiple impairments including mental retardation and autism who attended school in the CCSD during the 2008/2009 school year. A review of documents, as well as interviews with the parent, principal, special education director, special education teacher, special education facilitator, behavior mentor and compliance monitor revealed the following facts.

The student had an 11/2/07 annual IEP in effect up through the development of a new annual IEP first drafted on 10/21/08 and finalized on 10/28/08. The new annual IEP is referenced hereinafter in this report as the 10/28/08 IEP though the dates on some of the pages are 10/21/08.

### Teacher Licensing and Preparation

At the beginning of the 2008/2009 school year, the student was placed in a self-contained special education classroom where the majority of the students were students with autism. The student did not attend the school after 10/13/08. Subsequent to the filing of the complaint and as part of the Resolution Agreement, the student attended another school in the district.

The parent stated to the investigation team that the special education teacher in the student's self-contained classroom at the beginning of the 2008/2009 school year did not know how to teach autistic students. The special education teacher, who was a first year teacher, reported that she held a special education endorsement for Generalist Resource issued by the NDE and that she was enrolled in the Option Program for Autism beginning with the 2008/2009 school year. Her Generalist Resource endorsement and her enrollment in the Option Program were confirmed to the investigation team by the NDE. The NDE Office of Teacher Licensure, as documented on its website, stated that teachers who hold a special education endorsement for Generalist Resource may teach autistic students if they enroll in the Option Program for Autism.

Neither the 11/2/07 IEP nor the 10/28/08 IEP contained requirements that the student needed to be taught by a special education teacher with a specific amount of teaching experience in autism.

### Implementation of BIP

The student had an 11/2/07 BIP in effect from 11/2/07 through 10/6/08 followed by a 10/7/08 BIP which was in effect at the time of the filing of this complaint. The 11/2/07 BIP included: 1) a description of behavioral concerns; 2) functional behavior assessment data; 3) list of replacement behaviors to be taught; 4) a reinforcement schedule for the student; 5) a pre-teaching sequence for the student; 6) crisis management strategies; 7) a requirement for progress monitoring specifically collecting data after each behavioral incident; and 8) and a requirement to review the outcome after each grading period.

The 10/7/08 BIP included: 1) a description of targeted behaviors; 2) functional behavior assessment data; 3) a list of replacement behaviors to be taught; 4) positive behavior change strategies for the student; 5) supports such as positive strategies to modify the environment; 6) crisis management strategies; 7) a requirement to monitor progress with data collection and the use of discrete trial data; and 8) a requirement to review the BIP by 2/1/09.

The special education teacher, special education facilitator and behavior mentor reported that the 11/2/07 and 10/7/08 BIPs were implemented for the period of time that the student attended school during the 2008/2009 school year. The special education teacher provided documentation of the implementation of the BIPs to the investigation team, including the following:

1. Frequency Data Sheets and Behavior Frequency Forms, tabulating the occurrence of targeted inappropriate behavior on a daily basis from 8/25/08 through 10/7/08;
2. Teacher notes to the parent on various dates from 8/25/08 through 10/10/08 describing implementation of the reward system (e.g., providing time on the princess phone as a reward for positive behaviors; ignoring negative behaviors; use of blanket to calm student); and
3. Baseline Data Sheets and detailed narratives for various dates from 8/25/08 through 9/24/08 describing the use replacement behaviors taught and strategies used to reinforce positive behaviors (e.g., using reward card to reinforce moments when the student displayed appropriate behavior during an episode when the student was also hitting, spitting, and throwing chairs; using token cards to say thank you when the student displayed calm while waiting for the teacher to move the student's watch from one wrist to the other).

In addition, the principal provided documentation through a Chronology of Behavior Summary which described incidents and consequences for inappropriate behavior that required assistance from the principal or assistant principal from 8/25/08 through 10/13/08. This Chronology describes use of the student's token system and reinforcers, including access to a flip cell phone and coloring book sheets, as well as attempts to redirect the student when the behavior was inappropriate.

#### Content of 10/28/08 IEP

##### a. Placement

The Present Levels in the 10/28/08 IEP indicated that the student "displays aggressive and inappropriate behaviors towards adults and peers, including hitting, spitting, kicking and cussing. In addition, the student throws items, destroys school and classroom property, disrobes and self-stimulates in the hallways and/or classroom, and escapes outside of the safety boundaries of the school campus. During the behavioral outbursts multiple personnel are required to supervise the student." Teacher notes indicate that other students in the class had to be removed for their own safety on at least three occasions when the student was acting out. The Chronology of Behavior Summary indicated that, among other things, the student drew blood from staff members when throwing items at them or scratching them on at least two occasions and attempted to choke one of the teachers.

The 10/28/08 IEP committee put checkmarks indicating that it had considered and rejected "placement in the regular class with supplementary aids and services (no removal)," "regular class and special education class (e.g., resource) combination," and "self-contained program." The Placement Page had a checkmark indicating that the 10/28/08 IEP committee selected a special school placement for the student.

The justification on the Placement Page for special school placement stated "[Student] demonstrates such specialized needs in the area being taught learning to learn skills that the intensity needed for this type of instruction is beyond the scope of the general education curriculum. [Student] has significantly delayed cognitive abilities and requires a need for extensive modifications to the general education curriculum. [Student] has demonstrated a need for continual/constant assistance, prompts, modeling, and verbal cues that would disrupt classroom routines and functioning. [Student] has intense, multiple therapeutic needs requiring many unique accommodations/modifications that would disrupt classroom routines/functioning, and [student's] behavior is a danger to the safety of self, staff or others. [Student] ...requires extensive supervision and assistance and this extensive supervision and assistance would disrupt the general education classroom. The potential harmful effect of this placement is limited interaction with non-disabled peers."

##### b. BIP, including home/family needs

The 10/28/08 IEP in the section "Consideration of Other Factors" indicated that the student's behaviors "impeded the student's learning or the learning of others."

There was no mention in the Present Levels that the student's behaviors at home interfered with the student's learning at school. The 10/28/08 IEP contained no goals, objectives, related services or supplementary aids and services that addressed the student's behavior or learning at home. The sole parental concern in the 10/28/08 IEP was that "Mom would like for [student] to be successful and happy." Neither the 10/28/08 IEP or the 10/7/08 BIP included provisions to address home/family needs.

##### c. Assistive technology

The Present Levels of the 10/28/08 IEP indicated that the "[Student] needs to develop appropriate strategies to communicate when [student] needs to leave an activity and participate in classroom activities." The 10/28/08 IEP included two supplementary aids and services addressing assistive

technology. The first was to request an Assistive Technology assessment. The second was to use low-tech assistive technology that was available on the school campus to assist with communication.

d. Speech/language

Assessment results summarized in the Present Levels of the 10/28/08 IEP indicated, “the student’s articulation skills are consistent with motor speech delays which some students with autism display. [Student] will imitate correct proximity of articulators (tongue, lips) when modeled and produce sounds appropriately in isolation, syllables and single syllable words with models, but continues to need work sequencing sounds in multi-syllabic words, phrases and sentences.” The 10/28/08 IEP included two annual goals addressing speech/language and the related services of “direct and consult” speech/language services.

Parent Participation in Placement Decision in 10/28/08 IEP

The parent reported that the placement decision was predetermined by the IEP committee without her participation because the district, in September 2008, had submitted a form to a special school to consider the student for placement and because the principal reported at the 10/21/08 IEP meeting that the special school could be an appropriate placement for the student. The special education facilitator reported that she had submitted a Technical Request Form to seek help with the student’s behavior. An examination of the Technical Request Form showed that the expected outcome of the request for help was to have special school staff “provide more structured and intensive strategies. Observation assistance with intensive and violent behaviors.” There was no mention anywhere on the Technical Request Form of a referral for the child to be placed in a special school. The principal reported that when the special school staff observed the student to provide more structured and intensive strategies, she asked if the student would be a “good fit” at the special school and was told that it appeared that it could be an appropriate placement for the student.

The special education facilitator reported that at an IEP meeting held on 10/21/08, placement options were discussed and the decision held in abeyance at the parent’s request because she wanted to visit some special school placements before a final placement decision was made.

A 10/28/08 telephone IEP meeting (Telephone IEP Meeting) was conducted to determine a placement for the student after the parent had considered special school placement. The parent and the special education facilitator reported that the parent participated in the Telephone IEP Meeting and shared her concerns about the placement options.

The parent disagreed with the placement decision reflected in the 10/28/08 IEP. A 10/28/08 prior written notice was sent to the parent notifying her of the proposed implementation of the 10/28/08 IEP placement and on 11/7/08 the parent requested a due process hearing to disagree with the district’s proposals.

The special education facilitator and principal also reported that they had informally discussed a number of options for the student’s placement prior to the Telephone IEP Meeting in order to understand what alternatives might be available. The special education facilitator and principal also reported that they had not made up their minds about what placement to recommend prior to the 10/28/08 IEP meeting.

**CONCLUSIONS OF LAW AND REASONS**

Issue 1: Whether CCSD complied with state requirements to provide an appropriately licensed and prepared teacher for the 2008/2009 school year for the student.

This complaint concerned an allegation that the district failed to provide the student a teacher with experience in autism education during the 2008/2009 school year.

State regulations at NAC §388.165(1)(a) state that a teacher “In a unit must be licensed in the area of special education, with an endorsement in the area of disability represented by the majority of the pupils in the unit.”

The student was placed in a self-contained program for students with autism at the beginning of the 2008/2009 school year. Consequently, the teacher was required to meet the endorsement requirements for teaching an autism unit. The NDE Office of Teacher Licensure states that teachers who hold a special education endorsement for Generalist Resource are properly endorsed to teach an autism unit if they enroll in the Option Program for Autism.

In this case, the special education teacher held a special education endorsement for Generalist Resource and was enrolled in the Option Program for Autism, so she was properly endorsed to teach in the self-contained autism unit. Neither state law nor any other document (e.g., a provision in an IEP) obliged the CCSD to employ a teacher who had a specific number of years of teaching experience. Thus, the district met its obligation to provide an appropriately licensed and prepared teacher for the student when the student’s teacher held a special education endorsement in Generalist Resource and was enrolled in the Option Program for Autism.

*Therefore, the investigation team concluded that CCSD complied with state requirements to provide an appropriately licensed and prepared teacher for the 2008/2009 school year for the student.*

Issue 2: Whether CCSD implemented the BIPs in effect for the student during the 2008/2009 school year.

This complaint concerned an allegation that the district provided minimal behavior intervention support at the current school during the 2008/2009 school year.

State regulations at NAC §388.281(6)(g) state that the school district shall “provide the services and instruction deemed necessary for the pupil by the [IEP] committee.”

In this case, there were two BIPs in effect for the student during the period of time the student attended school in the 2008/2009 school year: the 11/2/07 BIP and the 10/7/08 BIP (BIPs). The investigation team determined that there was adequate documentation in the teacher notes, the Frequency Data Sheets and Behavior Frequency Forms, Baseline Data Sheets and narratives, and the Chronology of Behavior Summary to conclude that the BIPs were implemented. The documentation revealed that the district taught replacement behaviors, provided reinforcements and other positive behavior strategies, collected data on targeted behaviors, and maintained descriptions of interventions and consequences provided in specific behavior incidents. Thus, the investigation team determined that the district met its obligation to provide the services and instruction deemed necessary for the pupil with regard to the BIPs.

*Therefore, the investigation team concluded that CCSD implemented the BIPs in effect for the student during the 2008/2009 school year.*

Issue 3: Whether CCSD complied with state requirements with regard to providing an opportunity for parent participation in making the placement decision proposed in the 10/28/08 IEP and providing prior written notice of its placement decision.

This complaint concerned allegations that the district made an offer of an AIA placement without benefit of a manifestation determination review and made the determination to place the student in the special school prior to the IEP meeting. As a preliminary matter, the investigation team determined that the proposed change in placement contained in the student’s 10/28/08 IEP was not intended or proposed as a disciplinary change of placement, so no manifestation determination was required.

State regulations at NAC §388.302(1) state that “The parent of a pupil with a disability may participate in meetings relating to the ... educational placement of the pupil ... .”

State regulations at NAC §388.302(4)(a) and (b) state that, with regard to the requirements for participation by parents in certain meetings, “meeting” does not include “(a) Informal or unscheduled conversations involving the public agency or an employee of the public agency, including, without limitation, conversations relating to teaching methodology, lesson plans or the coordination of services; or (b) Preparatory activities of the public agency to develop a proposal or a response to a proposal submitted by the parent which will be discussed at a meeting.”

State regulations at NAC §388.300(7)(a) state that “... a public agency shall notify the parents of a disability ... within a reasonable period of time before any proposed or refused action regarding the: (a) Placement of the pupil.”

In this case, the evidence shows that the parent was provided an opportunity to participate in placement discussions both at the 10/21/08 IEP meeting, when she requested and received additional time to consider special school placements, and again at the 10/28/08 Telephone IEP Meeting. The 10/28/08 IEP documents the committee’s consideration and rejection of “placement in the regular class with supplementary aids and services (no removal),” “regular class and special education class (e.g., resource) combination,” and “self-contained program” before it selected a special school placement. Written notice of the district’s proposal to implement this placement was provided to the parent on 10/28/08, and she exercised her right to disagree with the placement proposal by requesting a due process hearing on 11/7/08.

Although district staff engaged in informal and unscheduled conversations and preparatory activities with relation to the placement of the student, these conversations and activities did not require the participation of the parent. The parent reported that the Technical Assistance Form submitted by the special education facilitator to special school staff in September 2008 demonstrated that the CCSD had determined the student would be placed in a special school placement prior to the student’s participation in that decision during the 10/28/08 IEP meeting. Examination of the Technical Assistance Form shows that the expected outcome of the request for help was to have special school staff assist through conducting an observation and providing more structured and intensive strategies for addressing the student’s behaviors. There is no evidence that the request for technical assistance constituted a placement decision.

*Therefore, the investigation team concluded that CCSD complied with state requirements with regard to providing an opportunity for parent participation in making placement decisions proposed in the 10/28/08 IEP and providing prior written notice of its placement decision.*

Issue 4: Whether the CCSD’s 10/28/08 IEP determinations were reasonably supported in light of the student’s abilities and needs with regard to:

- a. Placement
- b. BIP, including any provisions to address home/family needs
- c. Assistive technology
- d. Speech/language as a related service

This complaint concerned allegations that the district failed to provide an adequate IEP at the current school as well as in previous CCSD placements; that it placed the student in a special school that was not reasonably calculated to ensure that the student received educational benefit; failed to provide behavior strategies and create BIPs for the student at the current placement and very minimally in other placements; failed to offer or provide behavior intervention services for the home and family at any time; failed to provide an adequate system of communication to follow the student in school and to use outside the school environment.

State regulations at NAC §388.284(1)(k) and (l) state that each committee must include in the IEP it develops “(k) A statement of the other placements considered by the team and, if the pupil will be removed from the regular educational environment, the reasons why the team rejected a less restrictive

placement [and] (l) An explanation of the extent, if any, to which the pupil will not participate in a regular class or in extracurricular and other nonacademic activities with pupils who are not disabled.”

State regulations at NAC §388.284(2)(a)(b)(e) and (f) state that “When developing a pupil’s individualized educational program, the committee shall: (a) Consider the strengths of the pupil, the concerns of the parents for enhancing the education of their child, the results of ... the most recent evaluation of the pupil, and the academic developmental and functional needs of the pupil; (b) If the behavior of the pupil impedes the learning of the pupil or other pupils, provide positive behavioral strategies, supports and interventions, or other strategies, supports and interventions to address that behavior.” Further, the committee shall “(e) Consider the communication needs of the pupil” and “(f) Consider whether the pupil requires assistive technology devices and services.”

A Memorandum to Chief State School Officers (OSEP 34 IDELR 264 (July 2000)) clarifies in its answer to Question 7 that when a complaint alleges that a student’s IEP does not offer a free appropriate public education (FAPE), “The SEA may likely find that the public agency has complied with Part B requirements if the agency has followed required procedures, applied required standards, and reached a determination that is reasonably supported by the student-specific behavior.”

a. Placement

In this case the 10/28/08 IEP placement page documented that the IEP committee considered and rejected “placement in the regular class with supplementary aids and services (no removal),” “regular class and special education class (e.g. resource) combination,” and “self-contained program” before it recommended a special school placement.

The justification on the Placement Page for special school placement stated “[Student] demonstrates such specialized needs in the area being taught learning to learn skills that the intensity needed for this type of instruction is beyond the scope of the general education curriculum. [Student] has significantly delayed cognitive abilities and requires a need for extensive modifications to the general education curriculum. [Student] has demonstrated a need for continual/constant assistance, prompts, modeling, and verbal cues that would disrupt classroom routines and functioning. [Student] has intense, multiple therapeutic needs requiring many unique accommodations/modifications that would disrupt classroom routines/functioning, and [student’s] behavior is a danger to the safety of self, staff or others. [Student] ... requires extensive supervision and assistance and this extensive supervision and assistance would disrupt the general education classroom. The potential harmful effect of this placement is limited interaction with non-disabled peers.”

The district met its obligations to include in the IEP a statement of the other placements it considered, the reasons why the team rejected a less restrictive environment and an explanation of the extent, if any to which the student would not participate in any classes or activities with pupils who were not disabled. The district followed the “required procedures, applied required standards, and reached a determination that is reasonably supported by the student-specific behavior” with respect to the placement recommendation for the student.

*Therefore, the investigation team concluded that CCSD’s 10/28/08 IEP proposal was appropriate in light of the student’s abilities and needs with regard to placement.*

b. BIP, including any provisions to address home/family needs

In this case the 10/28/08 IEP indicated in both the Present Levels and under Consideration of Other Factors that the behavior of the pupil impeded the learning of the pupil and other pupils. The district incorporated the 10/7/08 BIP into the 10/28/08 IEP. The 10/7/08 BIP included positive behavioral strategies, supports and interventions and other strategies to address the student’s behaviors.

There was no provision in the 10/7/08 BIP to address home/family needs. The parent's only concerns expressed in the 10/28/08 IEP were that the parent wanted the student to be successful and happy. The investigation team concluded that there was no obligation to address home/family needs as there was no documentation in the Present Levels of the 10/28/08 IEP or elsewhere in the 10/28/08 IEP, or in the 10/7/08 BIP, that the student's behavior at home impacted the behavior and learning at school. The district, through developing the 10/7/08 BIP, followed the "required procedures, applied required standards, and reached a determination that is reasonably supported by the student-specific behavior" with respect to the development of the BIP.

*Therefore, the investigation team concluded that CCSD's 10/28/08 IEP proposal was appropriate in light of the student's abilities and needs with regard to the BIP, including any provisions to address home/family needs.*

c. Assistive technology

In this case the Present Levels indicated that the student needed to develop appropriate strategies to communicate when [student] needs to leave an activity and participate in classroom activities. The 10/28/08 IEP committee considered whether the pupil required assistive technology devices and services, determined the student did require assistive technology devices and services, and provided them through two supplementary aids and services in the area of assistive technology. The district followed the "required procedures, applied required standards, and reached a determination that is reasonably supported by the student-specific behavior" with respect to its proposals for assistive technology.

*Therefore, the investigation team concluded that CCSD's 10/28/08 IEP proposals were appropriate in light of the student's abilities and needs with regard to assistive technology.*

d. Speech/language as a related service

In this case, the Present Levels indicated "the student's articulation skills are consistent with motor speech delays which some students with autism display. [Student] will imitate correct proximity of articulators (tongue, lips) when modeled and produce sounds appropriately in isolation, syllables and single syllable words with models, but continues to need work sequencing sounds in multi-syllabic words, phrases and sentences."

The 10/28/08 IEP committee considered whether the pupil required speech/language services, determined that the student did need them, and provided them through the related services of direct and consult speech/language services. The district followed the "required procedures, applied required standards, and reached a determination that is reasonably supported by the student-specific behavior" with respect to speech/language.

*Therefore, the investigation team concluded that CCSD's 10/28/08 IEP proposals were appropriate in light of the student's abilities and needs with regard to speech/language as a related service.*